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CAMBRIDGE DISPLAY TECHNOLOGY LIMITED
and CDT OXFORD LIMITED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SUNNYSIDE DEVELOPMENT
COMPANY LLC,

Plaintiff,

vs.

OPSYS LIMITED, a United Kingdom
company,

Defendant.

No. C-05-553-MHP
No. C-08-1780-MEJ

**RESPONSE OF SPECIALLY
APPEARING DEFENDANTS
CAMBRIDGE DISPLAY
TECHNOLOGY LIMITED AND
CDT OXFORD LIMITED TO
PLAINTIFF'S MOTION FOR
ADMINISTRATIVE RELIEF**

SUNNYSIDE DEVELOPMENT
COMPANY LLC,

Plaintiff,

vs.

CAMBRIDGE DISPLAY TECHNOLOGY
LIMITED, CDT OXFORD LIMITED,
OPSYS LIMITED, and JOHN DOES I
through V,

Defendants.

No. C-05-553-MHP:
Courtroom 15, 18th Floor
Hon. Marilyn Hall Patel

No. C-08-1780-MEJ:
Courtroom B, 15th Floor
Hon. Maria-Elena James

1 **I. INTRODUCTION.**

2 Pursuant to Civil Local Rules 3-12, 3-13 and 7-11, specially appearing defendants
 3 **CAMBRIDGE DISPLAY TECHNOLOGY LIMITED** (“CDT Ltd.”) and **CDT**
 4 **OXFORD LIMITED** (“CDT Oxford”; collectively, “Defendants”) submit this response to
 5 the Administrative Motion to Consider Whether Cases Should Be Related, Pursuant to Civil
 6 L.R. 7-11; [and] Notice of Pendency of Other Action, Pursuant to [Civil] L.R. 3-13 & 7-11,
 7 which plaintiff Sunnyside Development Company LLC (“Sunnyside”) filed as Dkt. 4 on
 8 May 19, 2008 in Action No. C-08-1780-MEJ. The two cases in question are:

- 9 1. *Sunnyside Development Company, LLC, v. Opsys Limited*, No. C-05-00553-
 10 MHP (“*Sunnyside I*”), appeal pending, No. 07-16773 (9th Cir.) (“*Sunnyside I*”); and
- 11 2. *Sunnyside Development Company, LLC, v. Cambridge Display Technology*
 12 *Limited, et al.*, No. C-08-01780-MEJ (“*Sunnyside II*”).

13 (Defendants note that Sunnyside filed this motion in *Sunnyside II* rather than in
 14 *Sunnyside I*, contrary to Civil L.R. 3-12(b), which states that such motions should be filed
 15 “in the earliest-filed case” Defendants therefore are filing this response in both cases.)

16 Defendants make this appearance specially, without waiving any applicable
 17 defenses, including the defenses of lack of personal jurisdiction and improper venue. At
 18 least CDT Oxford (which is a United Kingdom corporation headquartered in the United
 19 Kingdom and has had no contact with the United States) plans to raise these defenses in a
 20 motion to dismiss under Rule 12(b) of the Federal Rules of Civil Procedure at the
 21 appropriate time. At that time, Defendants also may ask that the Court stay *Sunnyside II*
 22 pending the resolution of the appeal in *Sunnyside I*, which is fully briefed and awaiting oral
 23 argument in the Ninth Circuit. Defendants also note the pendency of a related Second
 24 Circuit appeal, which is described in part II below.

25 **II. BRIEF STATEMENT OF THE RELATIONSHIP OF THE ACTIONS**

26 **ACCORDING TO THE CRITERIA SET FORTH IN CIVIL L.R. 3-12(a).**

27 Defendants submit that *Sunnyside II* is related to *Sunnyside I* within the meaning of
 28 Civil L.R. 3-12(a), and that *Sunnyside II* should therefore be reassigned to the Honorable

1 Marilyn Hall Patel, who presided over *Sunnyside I*.

2 A. **Procedural history of *Sunnyside I* and related cases.**

3 In *Sunnyside I*, Sunnyside sued CDT Ltd. and Opsys Limited (“Opsys”) for breach
 4 of lease and fraud. *Sunnyside I* Dkt. 1. (Opsys is also named as a defendant in
 5 *Sunnyside II*, although this response is made on behalf of only CDT Ltd. and CDT Oxford.)
 6 The Court dismissed **with prejudice** both claims against CDT Ltd. and the fraud claim
 7 against Opsys. *Sunnyside I* Dkt. 39 (order filed Aug. 8, 2005), reported as *Sunnyside Dev.*
 8 *Co., LLC v. Opsys Limited*, No. C-05-553-MHP, 2005 WL 1876106 (N.D. Cal. Aug. 8,
 9 2005). (Sunnyside did not appeal that ruling and the time to appeal has long since run.)
 10 Sunnyside then moved to file a second amended complaint, seeking to name Opsys’ and
 11 CDT Ltd.’s ultimate parent company, Cambridge Display Technology, Inc. (“CDT Inc.”),
 12 as an additional defendant on a successor liability theory. *Sunnyside I* Dkt. 48. The Court
 13 ruled that Sunnyside’s request to join CDT Inc. was premature and denied the request
 14 without prejudice, subject to renewal if and when Opsys’ primary liability was established.
 15 *Sunnyside I* Dkt. 57.

16 Thereafter, Sunnyside took extensive discovery about transactions involving
 17 CDT Inc., CDT Ltd., CDT Oxford and Opsys. Sunnyside eventually obtained a jury verdict
 18 against Opsys for breach of lease. *Sunnyside I* Dkt. 166. Sunnyside then moved under
 19 Federal Rules of Civil Procedure 25(c) and 69(a) to add CDT Inc. as a party to the action
 20 and to the judgment (“Rule 25(c) Motion”). *Sunnyside I* Dkt. 179. While the Rule 25(c)
 21 Motion was pending, the Court entered judgment against Opsys for \$4.9 million plus costs.
 22 *Sunnyside I* Dkt. 213. On August 29, 2007, the Court denied Sunnyside’s Rule 25(c)
 23 Motion. *Sunnyside I* Dkt. 224, reported as *Sunnyside Dev. Co., LLC v. Opsys Limited*,
 24 No. C-05-553-MHP, 2007 WL 2462142 (N.D. Cal. Aug. 29, 2007). Sunnyside filed a
 25 notice of appeal from this order, which is currently pending, fully briefed and awaiting oral
 26 argument. *Sunnyside Dev. Co., LLC v. Opsys Ltd.*, No. 07-16773 (9th Cir.).

27 In addition to *Sunnyside I*, Sunnyside filed two actions in New York in September
 28 and October 2007. It voluntarily dismissed one such action: *Sunnyside Dev. Co., LLC v.*

Opsys Ltd., Cambridge Display Tech. Ltd., CDT Oxford Ltd., Sumitomo Chem. Co., Ltd., Opsys Mgmt. Ltd., & Bank of New York, No. 112617/07 (N.Y. Sup. Ct., N.Y. County), after removal, Index No. 07-CV-09320 (S.D.N.Y.). It lost the other action (*Sunnyside Dev. Co., LLC, v. Bank of New York, Cambridge Display Technology, Inc., and Opsys Mgmt. Ltd.*, No. 07 Civ. 8825 (LLS), 2008 WL 463722 (S.D.N.Y. Feb. 19, 2008)), and has appealed (*Sunnyside Dev. Co., LLC, v. Bank of New York*, No. 08-1274-cv (2d Cir.)).

Sunnyside also has initiated insolvency proceedings against Opsys in the United Kingdom under the UK Insolvency Act 1986. *In the Matter of Opsys Ltd.*, No. 357 of 2008 (High Court of Justice, Companies Court). I am informed that a “winding-up order” in that matter was made on May 20, 2008.

All of these actions attempt to collect the judgment in *Sunnyside I*.

B. Analysis of the criteria set forth in Civil L.R. 3-12(a).

Civil Local Rule 3-12(a) sets forth these criteria:

(a) Definition of Related Cases. An action is related to another when:

(1) The actions concern substantially the same parties, property, transaction or event; and

(2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.

Applying these criteria to the facts and procedural history stated above, it is apparent that *Sunnyside II* is related to *Sunnyside I* for a number of reasons:

First, the two actions concern substantially the same parties. The plaintiff is the same—Sunnyside. Two of the three defendants named in *Sunnyside II*—CDT Ltd. and Opsys—were named as defendants in *Sunnyside I*. Only CDT Oxford was not a party to *Sunnyside I*. Even so, Judge Patel’s opinions in *Sunnyside I* discuss CDT Oxford at some length. See, e.g., *Sunnyside Dev. Co., LLC v. Opsys Limited*, No. C-05-553-MHP, 2007 WL 2462142, at *3, *4, *7, *8, *9, *10, *11 (N.D. Cal. Aug. 29, 2007), which contains no less than 18 references to CDT Oxford and holds that the transfer of CDT Oxford from Opsys to CDT Ltd. does “not support a finding of fraudulent transfer.” *Id.* at *11.

Second, *Sunnyside II* concerns substantially the same transactions and events at issue in Sunnyside's Rule 25(c) Motion in *Sunnyside I*. See Civil L.R. 3-12(a)(1). The transfers that *Sunnyside II* alleges to be fraudulent are the same transfers that Sunnyside relied upon in arguing, in its Rule 25(c) Motion in *Sunnyside I*, that CDT Inc. was liable as a successor for the judgment against Opsys. As noted, Judge Patel rejected these arguments, holding that Sunnyside had made no showing of any fraudulent transfer.

Third, *Sunnyside II* alleges claims against CDT Ltd. that would appear to be barred (on *res judicata* or claim preclusion grounds) by Judge Patel's order of August 8, 2005 in *Sunnyside I*. *Sunnyside Dev. Co., LLC v. Opsys Limited*, No. C-05-553-MHP, 2005 WL 1876106 (N.D. Cal. Aug. 8, 2005).

Fourth, and as stated by Sunnyside itself, *Sunnyside II* "arises out of efforts to collect the...judgment" in *Sunnyside I*. Pl.'s Admin. Mot. 2:15-16 (Dkt. 4).

Thus, it "appears likely that there will be an unduly burdensome duplication of labor and expense" if *Sunnyside II* is not conducted before the same judge who presided over *Sunnyside I*. See Civil L.R. 3-12(a)(2). Indeed, that is an understatement. unduly burdensome duplication of labor and expense would be a certainty.

III. CONCLUSION.

For all the foregoing reasons, Defendants respectfully request that the Court reassign *Sunnyside II* to the Honorable Marilyn Hall Patel.

Dated: May 22, 2008.

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